

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

EVERYMD,
Plaintiff-Appellant,

v.

**RICK SANTORUM, MITT ROMNEY, AND NEWT
GINGRICH,**
Defendants-Appellees,

AND

**GOLDMAN, SACHS, & CO. AND JPMORGAN CHASE
BANK, N.A.,**
Defendants-Appellees,

AND

**YAHOO, INC., AOL, INC., MICROSOFT, INC., AND
GOOGLE, INC.,**
Defendants-Appellees.

2012-1491

Appeal from the United States District Court for the
Central District of California in case no. 12-CV-1623,
Judge Mariana R. Pfaelzer.

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Before LINN, DYK, and WALLACH, *Circuit Judges*.

DYK, *Circuit Judge*.

O R D E R

Upon review of the parties' responses to the court's August 8, 2012 order, the court determines whether this appeal should be dismissed for lack of jurisdiction.

EveryMD appeals from a June 22, 2012 order of the United States District Court for the Central District of California staying proceedings in this patent infringement action pending inter partes reexamination of the patent-in-suit by the United States Patent and Trademark Office.

Ordinarily, an order staying a case pending reexamination is not a final appealable order pursuant to 28 U.S.C. § 1295(a)(1). *Spread Spectrum Screening LLC v. Eastman Kodak Co.*, 657 F.3d 1349, 1354 (Fed. Cir. 2011); *Slip Track Sys., Inc. v. Metal Lite, Inc.*, 159 F.3d 1337, 1340 (Fed. Cir. 1998); *Gould v. Control Laser Corp.*, 705 F.2d 1340, 1341 (Fed. Cir. 1983). EveryMD, however, contends that the order is appealable in this case on the ground that the stay is of an indefinite period.

The fact that a stay of the trial court's proceedings may leave the case in limbo for an undetermined period of time does not render the final judgment rule inapplicable. This court has recognized that an order granting a stay is appealable only if it puts the plaintiff "effectively out of court." *See Gould*, 705 F.3d at 1341; *see also Slip Track*, 159 F.3d at 1340 (allowing an immediate appeal when stay pending completion of reexamination proceedings would potential preclude party from raising issue of priority of invention in any forum).

Thus, the critical inquiry as to whether this court has jurisdiction over a stay order is not the duration of the stay; it is whether the stay has the effect of surrendering

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the federal action. *See Spread Spectrum*, 657 F.3d at 1355. In view of the fact that EveryMD has not pointed to any issue that will evade review, and the stay order states that this action will resume after the reexamination proceedings are completed, this court determines that EveryMD has not demonstrated that immediate appeal is warranted.

Accordingly,

IT IS ORDERED THAT:

- (1) The appeal is dismissed.
- (2) Each side shall bear its own costs.

FOR THE COURT

OCT 15 2012

Date

/s/ Jan Horbaly

Jan Horbaly
Clerk

cc: Frank Michael Weyer, Esq.
John N. Zarian, Esq
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